**INTHE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH**

**F.A.O. No. 673 of 1990**
**Date of decision November 28, 2007**

1. **Sudama Devi w/o late Sh. Chander Wali.**
2. **Durga Devi**
3. **Laxmi Devi**
4. **Rajiv Kumar**
5. **Ranjit Kumar**

**(minors through their mother Smt. Sudama Devi as their minors through their mother Smt. Sudama Devi as their next friend and natural guardian, all residents of presently c/o Huba Ram alias Uppa Ram Chowkidar, Punjab PWD B&R Provincial Store, oppostie Aay Cee Cinema, Patiala.**

**..... Appellants**

**Versus**

1. **Kewal Ram Driver of Bus No. PUV 2423 of Pepsu Road Trasnport Corporation, Patiala.**
2. **Pepsu Road Transport Corporation, Nabha Road, Patiala through its General Managere/Managing Director.**
3. **The Depot Manager of Pepsu Road Transport Corporation, Patiala.**
4. **Nagai Ram s/o (not known) r/o village Rajpur, Post Office Ibbu Ganj, District Azamgarh (U.P.)**
5. **Parwati w/o Nagi Ram R/o village Rajpur, Post office Ibbu Ganj, Distt. Azamgarh (U.P.)**

**..... Respondents**

**CORAM: HON'BLE MR. JUSTICE SHAM SUNDER**

Present: Mr. Harbhajan Singh, Advocate
for the appellants.

Mr. Onkar Rai,Advocate
for respondents No. 1 to 3.

Respondent NO.4 already dead.

None for respondent No.5.

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**F.A.O. No. 723 of 1990**
**Date of decision November 28, 2007**

**Pepsu Road Transport Corporation, thorugh its Managing Director**

**..... Appellant**

**Versus**

1. **Sudama Devi w/o late Sh. Chander Wali.**
2. **Durga Devi**
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7. **Parwati w/o Nagi Ram R/o village Rajpur, Post office Ibbu Ganj, Distt. Azamgarh (U.P.)**

**..... Respondents**

**CORAM: HON'BLE MR. JUSTICE SHAM SUNDER**

Present: Mr. Onkar Rai, Advocate
for the appellant.

Mr. Harbhajan Singh, Advocate
for respondents No.1 to 5.

Respondent No.6 already dead.

None for respondent No.7.

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**Sham Sunder, J.**

This judgment shall dispose of the afore-stated two appeals, the first filed by the claimants-appellants for the enhancement of compensation, and the second filed by the Pepsu Road Transport Corporation, the owner of the bus, for dismissal of the claim petition, arising out of one and the same award dated 8.3.1990, rendered by the Motor Accident Claims Tribunal, Patiala, relating to the same accident.

2. On 7.12.1988, Chander Wali deceased, his wife Sudama Devi

and Munshi Ram her brother had come to see off his (Chander Wali's) sister and her husband, and were waiting for a bus, near the New Corner Hotel, Patiala. A bus bearing No. PUV-2423, reached there, and the conductor of the bus was repeating time and again that the same was going to Nabha and at this Chander Wali, deceased stepped into the bus from its front side window, but Sudama Devi, however, could not board the same. Since Sudama Devi could not board the bus, he requested the conductor to stop the same, as a result whereof, it was stopped for a while, in between the railway gate No.18 and the crossing near Corner Hotel, Patiala. At that time, Chander Wali tried to get down from the bus, but Kewal Ram, driver of the same, started it at once without ensuring that he had actually got down therefrom. On account of the rash or negligent act of the driver of the bus Chander Wali fell down from the bus and sustained injuries. When he was being taken to the hospital, he died on the way.

3. At the time of accident and death of Chander Wali, he was aged about 25 years. He was a labourer, and also running a tea stall. His monthly income was Rs.2100/-. Sudama Devi, widow, Durga Devi and Laxmi Devi, minor daughters, Rajiv Kumar and Ranjit Kumar, minor sons of Chander Wali were completely dependent upon him, for their livelihood. On account of the death of Chander Wali, in a motor vehicle accident, referred to above, they were deprived of their livelihood. Accordingly, a petition under the Motor Vehicles Act, claiming compensation, in the sum of Rs.5 lacs was filed.

4. Respondents No. 1 to 3 put in appearance, and filed written statement, wherein they took up various objections and contested the petition. It was pleaded that the petition was not maintainable, as all the

legal heirs of Chander Wali, had not been impleaded, as a party. The accident was admitted, but it was denied that the driver of the bus was rash or negligent in driving the same. On the other hand, it was stated that Chander Wali, deceased tried to board the bus which was at a slow speed due to rush on the road, but he could not board the same as a result whereof he fell down and received injuries. It was further stated that Chander Wali was himself negligent, as a result whereof, the accident took place. The remaining averments, were denied, being wrong.

Respondents No. 4 and 5 were duly served but were not present. They were proceeded against ex-parte by the Tribunal.

5. In the replication filed by the appellants, they re-asserted all the averments, contained in the petition, and repudiated, those contained in the written statement.

6. On the pleadings of the parties, the following issues were struck by the Tribunal:-

"1. Whether Chander Wali died due to rash and negligent driving of bus No. PUV-2423 by its driver Kewal Ram?OPP

2. To what amount of compensation the claimants are entitled and from whom?OPP

3. Relief."

7. The parties led evidence. After hearing the learned Counsel for the parties, and, on going through the evidence, on record, the Tribunal came to the conclusion, that the driver of the bus, was rash or negligent in driving the same, as a result whereof, the accident took place, leading to the

death of Chander Wali, deceased. The Tribunal further held that the monthly income of the deceased was Rs.700/- and the dependency of the claimants-appellants was to the tune of Rs.400/- per month. Accordingly, by applying multiplier of 16, the Tribunal awarded compensation, in the sum of Rs.76,800/- with interest at the rate of 12% per annum.

8. Feeling aggrieved, against the award dated 8.3.1990 rendered by the Motor Accident Claims Tribunal, Patiala, two appeals, referred to hereinbefore, were filed.

9. I have heard the learned Counsel for the parties, and have gone through the record of the case, carefully.

10. The learned Counsel for the appellants in FAO No. 723 of 1990 (Pepsu Road Transport Corporation Ltd. Vs. Sudama Devi and others) contended that the Tribunal was wrong, in coming to the conclusion, that the driver of the bus was negligent in driving the same, as a result whereof, the accident took place, resulting into the death of Chander Wali. He further contended that the bus was full of passengers, and was at a slow speed, when Chander Wali tried to board the same. He was unsuccessful in his attempt, as a result whereof, he fell down, resulting into injuries on his person, and leading to his death. The submission of the learned Counsel for the appellant, in this appeal, does not appear to be correct. Sudama Devi, AW-1 was present with Chander Wali at the relevant time. She in clear-cut terms stated that the bus came and the conductor was crying that it was going to Nabha. Her husband boarded the bus, from the front door. She further stated that Chander Wali requested the driver to stop the bus as his wife remained on the road, as a result whereof, he slowed down the bus. When Chander Wali was coming out of the bus, which was being driven, at

a slow speed, the driver all of a sudden, increased the speed thereof, resulting into fall of her husband. She further stated that the rear wheel of the bus, ran over her husband as a result whereof, when he was being taken to Rajindra Hospital, Patiala he died on the way. Her statement during the course of cross-examination could not be successfully challenged. No doubt, she did not state the number of the bus as also the name of the driver thereof. However, the appellant-respondent in this appeal along with respondents No. 1 and 2 in appeal No.673 of 1990, in their joint written statement, admitted the accident but only denied the rash or negligent act, on the part of the driver. The statement of Sudama Devi (AW-1) is also corroborated by Ex.A-1, copy of the FIR. When the bus slowed down and Chander Wali was allowed to come out of the same, it was the duty of the driver of the same to ensure that he had already got down, from the same only after ensuring that Chander Wali had got down, from the bus, the driver could speed up the same. In the instant case, the driver of the bus, did not do so and without ensuring as to whether Chander Wali had already got down, from the same, which was at a very slow speed, suddenly increased the speed thereof. It, therefore, could be said that he was extremely negligent, in driving the bus, as a result whereof, the accident took place, leading to the death of Chander Wali. There was no reason on the part of Sudama Devi, widow of the deceased, to depose falsely. Her presence at the time of the accident stood proved. The Tribunal was, thus, right in holding that the accident took place on account of the rash or negligent act of the driver of the bus, in question, resulting into injuries on the person of Chander Wali, and leading to his death. The submission of the learned Counsel for the appellant-respondent in this appeal, being

without merit, must fail, and the same stands rejected.

11. It was next contended by the learned Counsel for the appellant, in this appeal, that from the evidence of Sat Pal, RW-1,who was the conductor of the bus, at the relevant time, it was proved that the driver thereof was neither rash nor negligent. He stated, in his statement, that the bus was at a slow speed. During the cross-examination, it was admitted by him, that a criminal case under Section 304-A IPC was registered against the driver of the bus and he was facing trial therein. Even Kewal Ram, RW-2, driver of the bus, himself admitted that he was arrested at the spot. In case, Kewal Ram was not negligent, in driving the bus, at the time of accident, resulting into the death of Chander Wali, he could make a statement before the police officials, in that regard. In case, the police officials of the concerned Police Station, were not ready to hear him, then he could certainly approach the higher police authorities, that he had been falsely implicated, in a criminal case, and the accident did not take place, on account of his rash or negligent act. He could also move an application, before his higher officers that he was not at fault, but the accident took place, on account of the negligent act of Chander Wali. He, however, did not do so, and kept mum. His mere silence, for a long time,in itself is sufficient to prove that he was negligent, in driving the bus, at the relevant time, as a result whereof, the accident took place, leading to the death of Chander Wali. The statement of Sat Pal, RW-1 and Kewal Ram, RW-2, were rightly disbelieved by the Tribunal. The contention of the learned Counsel for the appellant, being without merit, must fail, and the same stands rejected. The findings of the Tribunal, on issue No.1 being correct, are affirmed.

12. In FAO NO. 673 of 1990, the Counsel for the appellants-claimants, contended that the Tribunal was wrong in awarding, a meager compensation. He further contended that the income of Chander Wali, at the time of his death, was about Rs.2,000/- per month. He further contended that the Tribunal was thus, wrong in coming to the conclusion that the monthly income of Chander Wali was Rs.700/-. He further contended that the multiplier, in this case, was required to be applied as 25, as the age of the deceased at the time of the accident was 25 years. The contention of the learned Counsel for the appellants is partly correct. Sudama Devi, widow of the deceased, when appeared as, AW-1, did not state about the income of the deceased. Karnail Singh,AW-2, stated that Chander Wali was working with him, as a labourer, and was getting Rs.30/- per day. Shish Kumar, AW-3, no doubt, stated that Chander Wali was earning Rs.40-50 daily by selling tea on a hand cart. However, no document was produced,on record, to show that Chander Wali was selling tea on a hand cart. On the other hand, it was proved from the statement of Karnail Singh, AW-2, that he was a labourer and earning Rs.30/- per day. In the year 1988, a labourer could certainly fetch at Rs.30/- per day as his wage. The income of Chander Wali, at the time of his death could, therefore, be said to be Rs.900/- per month, and not Rs.700/- per month, as held by the Tribunal. He was aged about 25 years, as is proved from the evidence on record. At the time of his death, he was having four minor children and wife.Since Chander Wali was to support a large family he must be spending minimum amount for his maintenance. In my opinion, he was keeping Rs.225 per month for his personal maintenance thereby leaving a sum of Rs.675/- per month (round figure) for the maintenance of the appellants-

claimants. The appellants-claimants, thus, were entitled to compensation in the sum of Rs. 1,31,600/- (Rs.675x12x16+2000 as funeral expenses). The interest awarded by the Tribunal was on the higher side. It is thus reduced to 9% per annum. The amount of compensation is thus, required to be enhanced to the extent indicated above. The findings of the Tribunal on issue No.2, are modified, as indicated above.

13. For the reasons recorded hereinbefore, FAO No.673 of 1990 is partly accepted, with no order as to costs, and the amount of compensation is enhanced to Rs.1,31,600/- from Rs.76,800/-, awarded by the Tribunal. All the appellants-claimants shall be entitled to receive the compensation in equal share. They shall also be entitled to interest at the rate of 9% per annum instead of 12% per annim from the date of filing the application, till the realization of the amount of compensation. The shares of the appellants-claimants, Durga Devi, Laxmi Devi,Rajiv Kumar and Ranjit Kumar, who were minors at the time of filing the claim petition, shall be deposited in FDRs, in their names, if they have not already attained majority, and they shall be entitled to receive the same, on attaining majority. Respondents No.1 to 3 are held jointly and severally liable, to pay the amount of enhanced compensation. Anuy amount received by the appellants/claimants under the no fault liability clause shall stand adjusted against the amount of compensation.

14. FAO No. 723 of 1990 titled as Pepsu Road Transport

Corporation Vs. Sudama Devi and others, is dismissed with no order as to costs.

**(SHAM SUNDER)**
**JUDGE**

**November 28, 2007**
**archana**

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**CORAM: HON'BLE MR. JUSTICE SHAM SUNDER**

Present: Mr. Onkar Rai, Advocate
for the appellant.

Mr. Harbhajan Singh, Advocate
for respondents No.1 to 5.

Respondent No.6 already dead.

None for respondent No.7.

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**Sham Sunder, J.**

For orders see FAO NO. 673 of 1990 Sudama Devi and others Versus Kewal Ram and others (decided on 28.11.2007).

**(SHAM SUNDER)**
**JUDGE**

**November 28, 2007**
**archana**